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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

CONLEY, SEAN EVERETT

ART UNIT PAPER NUMBER

1744

DATE MAILED: 12/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/650,134

Applicant(s)

HE ET AL.

Examiner

Sean E. Conley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 28 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 6/14/2004.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Manne (U.S. Patent No. 6,169,595 B1).

Regarding claim 1, Manne ('595) discloses a vapor dispensing device comprising: a first volatizable material (liquid or gel fragrance in fragrance holder (48)); a second volatizable material (a second liquid or gel fragrance in a second fragrance holder (48)) separately contained from said first volatizable material; and a common delivery system (microprocessor (34), compressed air inlet hub (26), compressor (30), valves (22, 28), outlet tubing (14), and scent inlet (18)) communicating with said first and second volatizable materials, said delivery system configured to facilitate evaporation of said first volatizable material and said second volatizable material into an environment. Specifically, the evaporated scent from the fragrance holders (48) is directed through the delivery system to the nasal passages of a user wearing the nasal tubing (20) in order to provide the user with a scent or mixture of scents that correspond to a movie or video (see figure 1; col. 5, line 4 to col. 6, line 43).

Regarding claim 2, Manne ('595) discloses that the first vaporizable material (liquid or gel fragrance in fragrance holder (48)) includes a first fragrance and said second volatizable material (a second liquid or gel fragrance in a second fragrance holder (48)) includes a second fragrance (see col. 2, lines 55-57; see col. 3, lines 17-21; col. 5, line 45 to col. 6, line 13; col. 7, lines 49-63).

Regarding claim 3, Manne ('595) discloses that the first and second volatizable materials (first and second liquid or gel fragrance in a first and second fragrance holder (48)) are physically attached to said delivery system. More specifically, the fragrance holders (48) are directly attached to the delivery system which comprises a microprocessor (34), compressed air inlet hub (26), valves (22, 28), outlet tubing (14), and scent inlet (18)). The fragrance holders (48) are attached to the delivery system by inlet and outlet tubing (see figure 1; col. 5, line 4 to col. 6, line 14).

Regarding claim 4, Manne ('595) discloses that the delivery system comprises a transfer mechanism (air compressor (30) delivering compressed air to the fragrance containers (48)), an evaporation region (open area inside of the fragrance containers (48)); and a controller (microprocessor (34)) configured to modulate the amounts of said first and second volatizable material evaporated into the environment (see figure 1; col. 5, lines 4-35).

Regarding claim 5, Manne ('595) discloses that the transfer mechanism (air compressor (30)) is physically attached to the delivery system (see figure 1; col. 5, lines 25-62).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

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2. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Manne ('595) as applied to claim 4 above, and further in view of Manne (U.S. Patent No. 6,842,218 B1).

Manne ('595) fails to specifically teach a transfer mechanism that comprises a first wick structure communicating with said first volatizable material and said evaporation region, and a second wick structure communicating with said second volatizable material and said evaporation region.

Manne ('218) discloses a scent delivery system for delivering a plurality of scents to a users nose. The system comprising a single conduit (20) in which air flows (22) with a means for injecting scent into the conduit. The means for injecting is a plurality of scent reservoirs (46) affixed to the conduit (20). The scent reservoirs (46) each containing a liquid fragrance and a means for injecting scent into the conduit which is a wick (54) positioned in reservoir and extending from the reservoir into the conduit (see col. 3, line 19 to col. 4, line 57). A nasal interface is connected to one end of the conduit with a means for creating a flow of air in the conduit is connected to the other end of the conduit (see col. 1, lines 27-41). The wick (54) is intended to absorb and carry through capillary action scented liquid from the reservoir (46) up into conduit (20) so that it can be mixed with the compressed air flow (see col. 3, line 63 to col. 4, line 4).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Manne ('595) and include a wick inside the fragrance holder (48) as taught by Manne ('218) in order to enhance the delivery of the liquid fragrance into the air by wicking the liquid fragrance into the most

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direct path of the compressed air flow which results in an increased scent in the air flow that is delivered to the users nose.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sean E. Conley whose telephone number is 571-272-8414. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rick Crispino can be reached on 571-272-1226. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SEC *J.E.C.*  
December 7, 2005

*Krisanne Jastrzab*  
KRISANNE JASTRZAB  
PRIMARY EXAMINER